

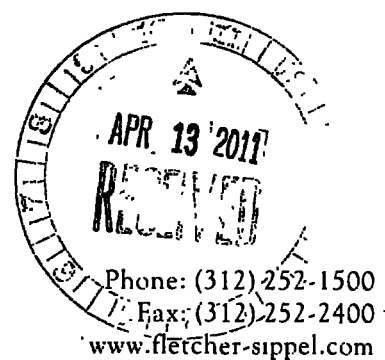
FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

April 12, 2011



229263

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
APR 13 2011
Part of
Public Record

Re: **Finance Docket No. 35492**
Atlantic and Western Railway, Limited Partnership -- Trackage
Rights Exemption -- Norfolk Southern Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Atlantic and Western Railway, Limited Partnership Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated April 12, 2011. A check in the amount of \$1,200.00, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Atlantic and Western Railway,
Limited Partnership

FILED

APR 13 2011

**SURFACE
TRANSPORTATION BOARD**

TJL:tl

Enclosures

FEE RECEIVED

APR 13 2011

**SURFACE
TRANSPORTATION BOARD**

229263

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35492

ATLANTIC AND WESTERN RAILWAY COMPANY, LIMITED PARTNERSHIP
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

ENTERED
Office of Proceedings

APR 13 2011

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION
OF
ATLANTIC AND WESTERN RAILWAY COMPANY, LIMITED PARTNERSHIP
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

FILED
APR 13 2011
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
APR 13 2011
SURFACE
TRANSPORTATION BOARD

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEY FOR ATLANTIC AND WESTERN
RAILWAY, LIMITED PARTNERSHIP

Dated: April 12, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35492

ATLANTIC AND WESTERN RAILWAY, LIMITED PARTNERSHIP
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
ATLANTIC AND WESTERN RAILWAY, LIMITED PARTNERSHIP
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Atlantic and Western Railway, Limited Partnership ("ATW"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its acquisition of limited local trackage rights over a line of railroad of Norfolk Southern Railway Company ("NS") between Cumnock and Brickhaven, North Carolina, a distance of approximately 13.8 miles.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), ATW submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

ATW is a Class III rail carrier that owns and operates approximately 10 route miles of rail line extending from Jonesboro through Sanford to Cumnock, North Carolina. See Atlantic & Western Railway, L.P. -- Acquisition Exemption -- Lines of Norfolk Southern Railway Company, Finance Docket No. 33021 (STB served September 9, 1996). ATW is indirectly controlled by Genesee & Wyoming Inc., a non-carrier holding company which also controls more than fifty other Class II and Class III rail carriers across the United States. See Genesee & Wyoming Inc., RP Acquisition Company One and RP Acquisition Company Two --

Control Exemption -- Rail Partners, L.P., AN Railway, et al., Atlantic & Western Railway, et al. and KWT Railway, Inc., Finance Docket No. 34708 (STB served June 24, 2005).

Pursuant to a written trackage rights agreement dated as of April 1, 2011 between ATW and NS, ATW proposes to acquire non-exclusive, limited local trackage rights over NS's line of railroad between the connection with ATW at approximately Milepost NS-279.9 at Cumnock, North Carolina and approximately Milepost 266.1 at Brickhaven, North Carolina, a distance of approximately 13.8 miles.¹ ATW's trackage rights are limited to providing local service to Noble Oil at Colon, North Carolina, Lee Brick & Tile at Leebrick, North Carolina and General Shale Brick at Brickhaven, North Carolina and their respective successors, and do not permit ATW to handle coal.

The full name and address of the applicant carrier herein is as follows:

Atlantic and Western Railway, Limited Partnership
13901 Sutton Park Drive South, Suite 125
Jacksonville, FL 32224
(904) 223-1110

Any questions concerning this Notice should be sent to ATW's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

¹ ATW's rights also will include sufficient head/tail room at both Cumnock and Brickhaven to safely conduct operations.

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

ATW intends to consummate the proposed trackage rights transaction on May 13, 2011.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will allow ATW to extend its existing rail service to three customers located on a connecting NS line.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

ATW owns and operates over rail property in the State of North Carolina.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which ATW proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the Trackage Rights Agreement dated as of April 1, 2011 between ATW and NS is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, ATW agrees to the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by ATW is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), ATW's proposed trackage rights acquisition also is exempt from historic preservation reporting requirements.

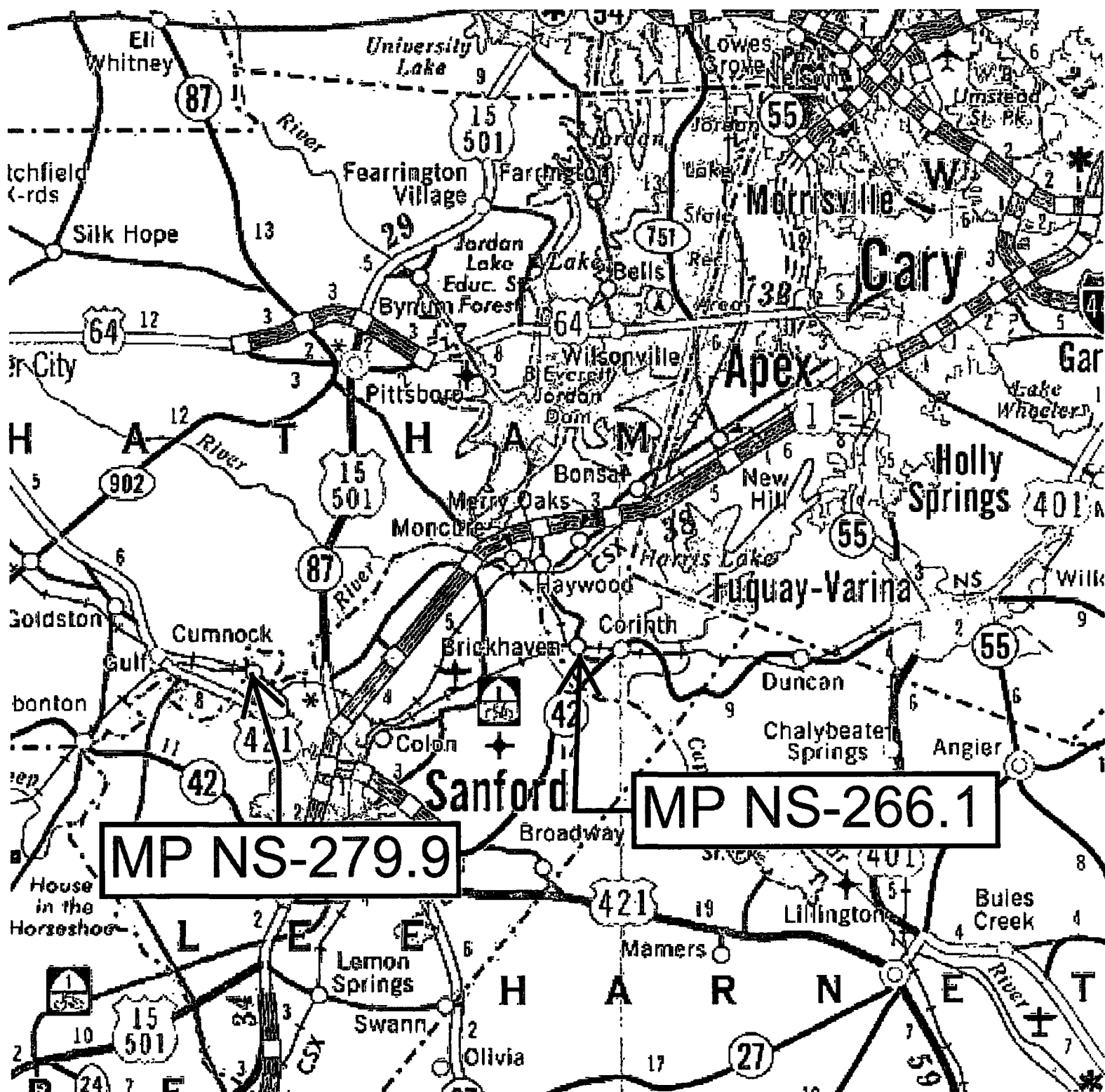
Respectfully submitted,

By: 

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR ATLANTIC AND WESTERN
RAILWAY, LIMITED PARTNERSHIP**

Dated: April 12, 2011



TRACKAGE RIGHT AGREEMENT

THIS TRACKAGE RIGHT AGREEMENT made this ____ day of ____, 2011 by and between **ATLANTIC & WESTERN RAILWAY (ATW)**, and **NORFOLK SOUTHERN RAILWAY COMPANY (NSR)**;

WITNESSETH:

WHEREAS, NSR operates a line of railroad between Cumnock and Brickhaven, North Carolina, and ATW, hereinafter referred to as "User," wishes to use certain of said NSR's line of railroad, hereinafter referred to as "Subject Trackage"; and

WHEREAS, NSR is willing to grant ATW trackage rights over the Subject Trackage to enable User to serve Noble Oil, Lee Brick & Tile and General Shale Brick; or their successors; and

WHEREAS, NSR is willing to allow User the right to use the Subject Trackage on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF TRACKAGE USE

Subject to the terms and conditions of this agreement (Agreement), NSR hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews, hereinafter referred to as "Trackage Use" over the Subject Trackage between User's connection with NSR at Cumnock, NC, approximately Milepost NS-279.9/CF-123.3, and the General Shale Brick facility at Brickhaven, NC, approximately Milepost NS-266.1 and as much head/tail room at either location on NSR to safely operate.

Section 2. USE OF SUBJECT TRACKAGE

User's use of Subject Trackage shall be in common with NSR and NSR's right to use the Subject Trackage shall not be diminished by this Agreement.

- (A) Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of NSR, preclude the emergency use by User of such auxiliary trackage as may be designated by NSR for such purposes.
- (B) NSR shall have exclusive control of the management and operation of the

Subject Trackage. NSR may, at its discretion, admit other users to the Subject Trackage. User shall not have any claim against NSR for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

- (C) User shall have the right to operate in either direction over the Subject Trackage.
- (D) NSR shall have the exclusive right to grant trackage rights of any nature to use the Subject Trackage to other persons.

Section 3. RESTRICTION ON USE

The Trackage Rights herein are granted for the sole purpose(s) of User using the Subject Trackage to operate its trains to provide local freight service, only to the industrial tracks serving Noble Oil, Lee Brick & Tile and General Shale Brick or successors. User is not granted the right to transport coal over the Subject Trackage.

Section 4. MISCELLANEOUS SPECIAL PROVISIONS

When operating over the Subject Trackage, User's locomotives and crews must be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.

- (A) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage of the Subject Trackage will be subject to the approval of NSR's representative or that representative's designee.

Section 5. COMPENSATION

- (A) The Current Charge to be paid by User for the Subject Trackage Rights covered by this Agreement shall be : The Current Charge shall be subject to change to reflect any increase or decrease subsequent to the Effective Date of this Agreement in labor, material and other costs, as more fully set forth below.
- (B) NSR shall bill User annually on the anniversary date of this Agreement.
- (C) The Current Charge set forth in section 5 (A) hereof shall be revised upward or downward each year, beginning with the annual bill rendered for the year of 2011, to compensate for the increase or decrease in the cost of labor and

material, excluding fuel, as reflected in the Annual Indexes of chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the association of American Railroads ("AAR"). In making such a determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East district shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

- (D) In the event the base for the Annual Indexes of Charge-out Prices and Wage Rates issued by the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 17 of this Agreement.

Section 6. PAYMENT OF BILLS

- (A) All payments called for under this Agreement shall be made within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of the billing.
- (B) Bills rendered pursuant to the provisions of this Agreement, other than those provided for in Section 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by NSR at the time any work is performed by NSR for User or shall include actual costs and expenses, upon mutual agreement of the parties.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

NSR shall maintain, repair and renew the Subject Trackage with its own supervision and labor. NSR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but NSR does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. NSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts

to avoid such interruptions.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements. If User shall desire a new or upgraded connection or other facility, NSR will approve such improvement if it does not adversely affect NSR's operations and shall furnish the labor and materials for the construction on NSR's property as available, at User's sole cost and expense. User shall furnish labor and materials, at its cost, for construction on User's or a third party's property. User shall pay NSR for all maintenance expense for new or upgraded connections or facilities.

Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

NSR, from time to time and at its sole cost and expense, may make changes in, additions and betterment to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

Section 10. MANAGEMENT AND OPERATIONS

- (A) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless NSR and its parent corporation, subsidiaries, affiliates and partners and all of their respective directors, officers, agents, employees and partners from and against all claims, demands, costs, expenses, obligations, fines, penalties and liabilities (including reasonable attorney fees and expenses and court and litigation costs) imposed upon NSR or its parent corporation, subsidiaries, affiliates or partners or their respective directors, officers, agents, employees and partners under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.
- (B) User in its use of the Subject Trackage shall comply in all respects with the

safety rules, operating rules, timetables, notices, bulletins, orders, and other regulations and procedures of NSR, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NSR. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations without the prior consent of NSR.

- (C) User shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to NSR, upon receipt of bills therefor, any cost incurred by NSR in connection with the qualification of such employees of User, as well as the cost of pilots furnished by NSR, until such time as such employees of User are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated.
- (D) In the event of any investigation or hearing concerning the violation of any safety or operating rule or NSR timetable, notice, bulletin, order, regulation, procedure or practice by User's employees while on the Subject Trackage, User shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by User, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to User's employee or employees required to attend such hearings.
- (E) NSR shall have the right to exclude from the Subject Trackage any employee of User determined by an investigation or hearing, to be in violation of NSR's rules, regulations, orders, practices, procedures, timetables, bulletins or instructions whether contained in NSR's Timetable operating rules, safety rules, or otherwise. User shall release, indemnify, defend, and save harmless NSR and its parent corporation, subsidiaries, affiliates, and partners and all of their respective directors, officers, agents, employees and partners from and against any and all claims and expenses resulting from such exclusion of an employee.
- (F) The trains, locomotives, cars and equipment of User, NSR, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.

- (G) In the event that a train of User shall be forced to stop on the Subject Trackage, due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by NSR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, NSR shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse NSR for the full cost of rendering any such assistance, or of any agents or contractors who are engaged to render such assistance.
- (H) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by NSR or its agents or contractors, and User shall reimburse NSR for the cost thereof.
- (I) In the event NSR and User agree that NSR should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

Section 11. MILEAGE AND CAR HIRE

All cars moving under this Agreement shall be in the account of User. Mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly.

Section 12. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, NSR or its agent or contractor shall perform or provide such service, including the repair and restoration of roadbed, trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

Section 13. LIABILITY

- (A) This Section 13 is intended to allocate, between the parties, the responsibility for death, personal injury, or property damage arising from the operations contemplated by this Agreement. Nothing in this Section 13 shall be construed to create or confer any right or cause of action on any person not a party to this Agreement.
- (B) Liability for (a) personal injury to or death of any person, (b) damage to the real or personal property of any person (including, but not limited to, that of the parties), (c) punitive or exemplary damages, and (d) clean-up and remedial expenses, shall be determined as follows:

 - (i) Each party shall be responsible, without regard to fault, for damage to its own equipment, its own property, for lading in its possession, and for the death of or injury to its own employees. For the purposes of this Section 13, pilots furnished by NSR to User pursuant to this Agreement shall be considered employees of User while such pilots are on or about the equipment or premises covered by this Agreement. For purposes of this Section 13, the trains, cars, operations and employees of any other present or future tenant of the Subject Trackage shall be considered the trains, cars, operations and employees of NSR.
 - (ii) Except as provided in Section 13(B)(i), each party shall be separately responsible, without regard to fault of either party, for all liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, when such death, personal injury, or property damage results solely from the trains, operations, or employees of that party without the involvement of the trains, operations, or employees of the other party.
 - (iii) Except as provided in Section 13(B)(i), liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, resulting from the trains, operations, or employees of both parties shall be divided equally between the parties hereto, without regard to the fault of either party.
 - (iv) The terms "liability", "damage", "damages", or "injury" as used in this Section 13 shall include related court costs, expenses, and attorney's fees. Liability shall not include fines and penalties, which shall always be paid by the party against whom they were assessed.

- (v) Under no circumstances will either of the parties to this Agreement assert a claim for punitive or exemplary damages against the other party.

(C) Process

- (i) Whenever any liability is imposed upon a party under the provisions of this Section 13, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement from and against that liability.
- (ii) If any suit or action is brought against either NSR or User for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, the other party shall be given prompt written notice by the party sued, and the party so notified must either assume responsibility for the defense of the suit or participate in its defense, as may be appropriate.

- (D) Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for any death, personal injury, or damage to property to the extent such death, personal injury, or damage to property was caused by acts or omissions of any of that party's employees while under the influence of drugs or alcohol. A FRA positive test for drugs or a FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Section 13.

Section 14. CLAIMS

- (A) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant Association of American Railroads (AAR) rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties.
- (B) Each party shall indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to

employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 15. INSURANCE

- (a) User shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 13 hereof. Such insurance shall provide minimum limits of Twenty Five Million Dollars (\$25,000,000) per occurrence but may be subject to an annual aggregate limit of Twenty Five Million Dollars (\$25,000,000) and a per occurrence deductible not in excess of Five Hundred Thousand Dollars (\$500,000).
- (b) If the insurance provided under this Section 15 takes the form of a Claims Made Policy, User agrees to purchase whatever supplemental coverage may be necessary to provide continuous supplemental coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least three (3) years following the termination of this Agreement.
- (c) On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect.
- (d) Every policy of insurance obtained by User pursuant to the requirements of this Section 15 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by User to satisfy the requirements of this Section 15 will be subject to the approval of NSR.
- (e) Within thirty (30) days of execution of this Agreement, and within thirty (30) days of any subsequent renewals of, or material changes to (whether or not during the term of the policy or when it is renewed), the applicable insurance, User will furnish the Director – Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, with

certificates of insurance evidencing the required insurance coverage. Compliance with this requirement will not relieve User of any other obligation under this Agreement and will in no way limit or modify User's obligation to provide the specific insurance coverage required by this Agreement.

Section 16. TERM, DEFAULT AND TERMINATION

- (A) This Agreement shall become effective ("Commencement Date") as of the first date signed by both NSR and User, and if required, following receipt of any regulatory approvals and following the expiration of any time periods required by the issuance of labor notices by NSR, and shall remain in full force and effect for a period of five (5) years and shall automatically renew for successive annual periods unless notice is given by either party in accordance with Section 16(B). The parties anticipate that certain regulatory filings will be required of User to cause this Agreement to become or remain effective, and such filings shall be at the sole cost and expense of User.
- (B) Either party may terminate this Agreement by giving 180 days' notice to the other. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Subject Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from NSR, NSR shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by NSR of any prior breach thereof, to terminate the Agreement. The exercise of such right by NSR shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.
- (D) The rights, benefits, duties and obligations running from or to User, except to a controlled subsidiary under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.

Section 17. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either

party hereto, and then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator. All proceedings, testimony, submissions of the parties and award of the arbitrator shall be private and confidential between the parties and shall not be disclosed to another party, except in connection with a judicial action to enforce, vacate or modify the arbitration award or as required by law, but under the strictest confidentiality agreements or protective order the party can obtain.

Section 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto including any person, firm or corporation succeeding to the ownership of substantially all of the assets or business of User or into which User is merged or consolidated; provided, however, that User shall not in any manner transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of NSR.

Section 19. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to User: President
 Atlantic & Western Railway
 13901 Sutton Park Drive South, Suite 125

_____ Jacksonville, FL 32224

If to NSR: Vice President, Transportation-Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 20. GENERAL PROVISIONS

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (B) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (C) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (D) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.
- (E) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (F) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

- (G) This Agreement is the result of mutual negotiations of the parties hereto; none of whom shall be considered the drafter for purposes of contract construction.
- (H) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling, and subject to the strictest confidentiality agreements and protective orders the party can obtain.

Section 21. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries, affiliates and partnerships of such other parties, and all of their respective directors, officers, agents, employees and partners.

Section 22. ABANDONMENT OF SUBJECT TRACKAGE

User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Trackage or any portion thereof. NSR shall have the right, subject to securing any necessary regulatory approval, to discontinue and/or abandon its use of the Subject Trackage or any portion thereof.

In such event, User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage.

- (A) In the event NSR's application for authority to abandon is denied, User will withdraw any application it has filed under this Section 22.
- (B) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Section 22 result in an obligation imposed by any competent authority on any party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

ATLANTIC & WESTERN RAILWAY

Michael B. Holben By Wm. A. O'Jasper
Title President

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

By [Signature]
Title _____

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35492

**ATLANTIC AND WESTERN RAILWAY, LIMITED PARTNERSHIP
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company ("NS") has granted limited local trackage rights to Atlantic and Western Railway, Limited Partnership ("ATW") over NS's line of railroad between the connection with ATW at approximately Milepost NS-279.9 at Cumnock, North Carolina and approximately Milepost NS-266.1 at Brickhaven, North Carolina, a distance of approximately 13.8 miles. The trackage rights permit ATW to serve Noble Oil at Colon, North Carolina, Lee Brick & Tile at Leebrick, North Carolina and General Shale Brick at Brickhaven, North Carolina and their respective successors, and do not permit the transportation of coal. The trackage rights will be effective on May 13, 2011.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

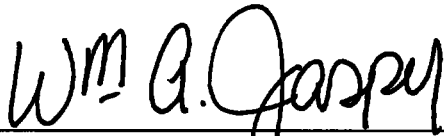
Dated: April __, 2011

By the Board

VERIFICATION

State of Florida)
)
County of Duval) SS:

William A. Jasper, being duly sworn, deposes and says that he is President of Atlantic and Western Railway, Limited Partnership, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



William A. Jasper

SUBSCRIBED AND SWORN TO
before me this 8 day
of April, 2011.



Notary Public

My Commission expires: 6/26/11

